



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

P-3627-2

3764  
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APPLICANT: DR. MICHAEL N. BERKE  
FOR: SELF-ADMINISTERED BACK MASSAGE  
SERIAL NO.: 09/609,166 ✓  
FILED: July 3, 2000  
EXAMINER: Andy Kashnikow, Patent Examiner, Art Unit 3764

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TECHNOLOGY CENTER

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action of 03/17/2005, enclosed is REVISED AMENDMENT PRACTICE for making additions and deletions to claim 1 under consideration.

Claim 1 is presented, as noted by the examiner, in Ex parte Jepson format of which the preamble is conceded prior art and, equally important, what follows is a claimed improvement over the prior art.

Thus, as prior art acknowledged by applicant and as disclosed by the cited Bowser patent (hereinafter the '143 patent) is the self-administered massage practiced in a doorway against a massaging device against which there is leaning contact by an individual but, as one improvement amongst others, is the individual being oriented transversely of the plane of the doorway rather than in the plane of the doorway. As a result, and as best understood from Fig. 4, the individual is within reach of a facing doorway frame 30 and presses off against frame 30 to

correspondingly increase the massaging pressure applied at the interface of the massaging device and the individual's back area being massaged.

For good measure, the claim under consideration recites (1) vertical sliding positioning of the massaging device and (2) obviating slippage at the interface of the massaging device and the individual's back area with its attendant benefit, both (1) and (2) results achieved in ways not disclosed in the '143 patent.

In applying a rejection under 35 U.S.C. 102(b,) the examiner has concluded that the subject matter of claim 1 is unpatentable over acknowledged prior art (APA) of the preamble in view of Bowser. The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). In establishing a prima facie case of obviousness, it is incumbent upon the examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the appellant's disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052 F USPQ2d 1434, 1439 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988). In this case, the fact that there is common use of a doorway for practicing a self-administered back massage does not demonstrate that the Bowser way of achieving this end use makes obvious applicant's way. Rather, what the record demonstrates is that applicant's way embodies significant improvements, properly presented in a Jepson claim format.